Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

In re: Stephen B. Young,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a federal district judge sanction an attorney under *Chambers v. NASCO*, 501 US 32 (1991) or Rule 11, Fed. R. Civ. P., for submission of a well-researched complaint asserting First Amendment rights when the judge does not accurately understand the First Amendment to the Constitution of the United States and his clerk engages in prejudicial *ex parte* contact with opposing counsel?

PARTIES TO THE PROCEEDINGS

Petitioner

Stephen B. Young, Esq., former Assistant Dean Harvard Law School, former Dean and Professor of Law, Hamline University School of Law, member of the American Law Institute, is the Petitioner as counsel to Plaintiffs Associated Contract Loggers, Inc. and Olson Logging, Inc. in the action entitled *Associated Contract Loggers, Inc. and Olson Logging, Inc., v. US Forest Service, Superior Wilderness Action Network and Forest Guardians*, Case No. 99-1485, USDC Minn.

Other Parties

Federal District Judge James M. Rosenbaum entered an order on May 26, 2000 sanctioning Petitioner $5,000 for filing a complaint in his court.

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Petitioner Stephen B. Young (tioner") respectfully requests that this Court issue a Writ of Certiorari to review under its supervisory powers the judgment entered in this case by the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals on the merits is attached hereto as Appendix D. The opinion and order of the United States District Court for the District of Minnesota imposing sanctions on Petitioner is attached hereto as Appendix C. The opinion and order of the United States District Court for the District of Minnesota dismissing the Complaint drawn by Petitioner is attached hereto as Appendix B.

JURISDICTION

The opinion of the United States Court of Appeals for the Eighth Circuit was issued on June 5, 2001 and was entered that same day. This Court has jurisdiction under 28 U.S.C. Sec. 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides, among other things, that "Congress shall make no law respecting an establishment of religion" and that "Congress shall make no law ... abridging the freedom of speech ...or the right of the people to petition the government for a redress of grievances"

STATEMENT OF THE CASE

This case arises as a response by financially disadvantaged loggers in northern Minnesota to the relentless efforts of certain extreme environmental activists who seek to impose a vision of Deep Ecology on federal lands in Minnesota. Deep Ecology does not believe as a matter of ultimate truth about the cosmos in which we live that human beings have a right to interfere with nature. Thus, Deep Ecologists seek to stop all logging on federal lands.

Associated Contract Loggers, Inc, ("ACL") is an association of loggers and their families in northern Minnesota. ACL members log on federal lands in northern Minnesota. Olson Logging, Inc. ("Olson") is a small family owned logging company in Orr, Minnesota which also logs on federal lands in that part of the state. As loggers and as citizens of the United States, members of ACL and the owners of Olson have an interest in the management policies adopted for federal lands by the United States Forest Service ("USFS"). In particular, they may not have their interests ignored by the federal government only and solely because the USFS follows certain doctrinal religious principles in conflict with those interests. Of particular concern to ACL and Olson are the doctrinal religious principles of Deep Ecology.

ACL and Olson believe, and research by Petitioner has sustained their belief, that Deep Ecology meets the key tests of being a religion for purposes of the Establishment Clause of the First Amendment. Thus, actions by the USFS to use Deep Ecology as a management philosophy for use of federal property would presumptively violate the Establishment Clause of that amendment to the Federal Constitution. Further, actions by private parties to impose the precepts of Deep Ecology on the USFS, as opposed to merely expressing faith and belief in the truth of such precepts, would implicate

such private parties in a violation of the Establishment Clause by the USFS.

Under the teachings of Deep Ecology and the harassment program of litigation brought by private parties Superior Wilderness Action Network ("SWAN") and Forest Guardians, the USFS has reduced the timber made available for harvest in the national forests located in northern Minnesota, to the severe economic distress of ACL, Olson and the small towns in that part of the state.

To petition the federal courts for redress of these grievances caused by implementation of Deep Ecology, ACL and Olson asked Petitioner to draft and file a complaint against USFS, SWAN and Forest Guardians. Petitioner was a founder of the *Journal of Law and Religion* and a student of Asian Religions. He was well aware of First Amendment jurisprudence in this Court and the writings by Professors Michael J. Perry and Kenneth Greenawalt on the proper use of religious precepts in politics and constitutional law. Petitioner, well aware of the First Amendment rights of SWAN and Forest Guardians and their members to free exercise of religion and free speech, drafted a complaint seeking declaratory relief, injunctive relief and damages for implementation of Deep Ecology as a policy of the USFS, by USFS on its own, or as a direct result of political dominance over federal policy exercised by SWAN and Forest Guardians.

The complaint as drafted by Petitioner was reviewed by a former President of the Minnesota State Bar Association.

The basis for federal jurisdiction for the complaint filed on behalf of ACL and Olson was the Constitution of the United States, Amendment 1, 16 USC Secs. 475, 528,529, and 28 USC Secs. 1331, 1361, and 2201.

Upon motion from defendants, on February 9, 2000, Federal District Judge James M. Rosenbaum dismissed the complaint because he believed that the Establishment Clause of the First Amendment could never "trump" the free speech

clause of the same Amendment. See opinion at Appendix B, p. 13.

In addition, *sua sponte*, but after *ex parte* contact had occurred between his office and counsel for SWAN and Forest Guardians, on May 26, 2000 Judge Rosenbaum sanctioned Petitioner $5,000 for bringing the complaint. Judge Rosenbaum felt he was entitled to impose such sanctions by Rule 11 of the Fed. R. Civ. P. and by inherent authority provided him by this Court's decision in *Chambers v. NASCO*, 501 US 32 (1991).

Petitioner appealed this sanction to the United States Court of Appeals for the Eighth Circuit. A three judge panel upheld Judge Rosenbaum in an unreported one sentence opinion. See opinion at Appendix D.

REASONS FOR GRANTING THE WRIT

The Question Presented is Important to the Sound and Just Administration of Justice

When a lawyer is sanctioned because a trial judge doesn't understand the law as well as the lawyer does, there is no justice. When a trial judge believes on a case of first impression that a lawyer has stretched the boundaries of existing law too far, the normal and usual remedy is to dismiss the complaint and have an appellate court review the legal analysis involved. Imposing sanctions for thinking deeply about the Constitution goes too far towards chilling the development of the law.

When one lawyer is sanctioned personally for dedicated representation of a client, who is disfavored in elite and politically correct urban circles, few other lawyers these days will step forward to assist such a client in defense of his or her constitutional rights and interests.

In this case, the three judge panel of the Eighth Circuit also departed from the accepted and usual course of judicial

proceedings as to warrant the exercise of this Court's supervisory powers. Rule 10 (a), Rules of the Supreme Court of the United States.

The Eighth Circuit did not provide written reasons justifying the *sua sponte* punitive use of power by Judge Rosenbaum. The Eighth Circuit literally had nothing of substance to say. The panel ducked its responsibility and left Petitioner punished for doing no more than thinking well and deeply about the Constitution.

And, Judge Rosenbaum's punitive imposition of sanctions was in itself an unusual departure from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's supervisory powers in overturning Judge Rosenbaum's action.

The accepted and usual course of judicial proceedings when a trial judge disagrees with a lawyer's legal argument to support a complaint is to dismiss the complaint. No *sua sponte* sanctions are appropriate at that point in a proceeding, especially where the judge has difficulty in finding grounds for sanctions under Rule 11, Fed. R. Civ. P.

Further, Judge Rosenbaum's actions came after his law clerk had *ex parte* communications with counsel for defendants asking them to come up with reasons to sanction Petitioner. That *ex parte* contact was a gross abuse of the accepted and usual course of proceedings in federal courts.

This Court in *NAACP v. Button*, 371 US 415 (1963) ruled that lawyers, too, have First Amendment rights to petition courts for a redress of grievances. See Rule 10 (c), Rules of the Supreme Court of the United States. Judge Rosenbaum and the three judges of the Eighth Circuit ignored that decision of this court.

If lawyers are sanctioned for seeking redress for abuse of power, who else will stand up effectively for the Constitution?

This Court in *East Coast RR Conf. v. Noerr Motor Freight*, 365 US 617 (1961), and subsequent cases ruled that

parties who seek relief from government to protect their interests may not be financially punished in an effort to scare them off from access to justice. The First Amendment restrains government from financially punishing those who petition for redress of grievances.

Judge Rosenbaum and the three judges of the Eighth Circuit did not take the time to provide Petitioner with those Constitutional, First Amendment protections, thus violating decisions of this Court.

Now, Judge Rosenbaum imposed his sanction because he believed that "...the Constitution's Establishment Clause does not trump its right to petition and the right to free exercise of religion, including the right to express those beliefs to government officials." See opinion of Judge Rosenbaum, Appendix B at p. 13. In this belief, Judge Rosenbaum was and is completely wrong.

Shortly after Judge Rosenbaum rendered his decision, this Court said in *Santa Fe Independent School District v. Jane Doe*, 530 US 290 (2000), that "The principle that government may accommodate the free exercise of religion does not supercede the fundamental limitations imposed by the Establishment Clause."

Upon review of the sanction and fully briefed on this Court's reasoning in *Santa Fe*, the three judge panel of the Eighth Circuit failed to articulate a defense of Judge Rosenbaum's understanding of the First Amendment.

Petitioner understood the law as this Court set it forth in *Santa Fe*. Such understanding underlay the Complaint drawn by Petitioner on behalf of ACL and Olson.

It should be a rule of federal jurisprudence that no lawyer can be sanctioned for having been right on the law, even to the intellectual discomfort and chagrin of a federal district judge.

In addition to his mistake regarding First Amendment law as expressed over the years by this Court, Judge Rosenbaum failed to follow this Court's decision in *Lyng v.*

Northwest Indian Cemetery Protective Association, 485 US 493 (1988). The opinion in *Lyng*, discussing as it did the inability of the USFS to use religious grounds for management of national forests, served as the express jurisprudential grounds for the Complaint filed by Petitioner on behalf of ACL and Olson. Again on appeal, the three judges of the Eighth Circuit found no way to write up reasoned support for Judge Rosenbaum's assertion that *Lyng* provided Petitioner with absolutely no tenable grounds for the Complaint.

Judge Rosenbaum believed that Petitioner's Complaint was "baseless logically and legally unsupported." The panel of the Eighth Circuit could not point to any specific example of " baseless logic" in the Complaint or absence of legal reasoning which could be brought to the support of the facts pled in the Complaint.

There is another flaw in Judge Rosenbaum's reasoning which was left in place by the Eighth Circuit. Judge Rosenbaum proceeded on the assumption that a complaint must be a legal brief. Instead, a complaint need only contain a short and plain statement of a claim. Rule 8 (a) (2), Fed. R. Civ. P. The legal analysis to be applied to a complaint on a motion to dismiss is any legal theory which could reasonably be deduced to support relief on the facts as pled. Judge Rosenbaum mistakenly used a summary judgment standard in ruling on a motion to dismiss. In this he was wrong, but he then placed the consequences of his mistake on Petitioner, which cannot be just.

Leaving the sanction on Petitioner intact would have a lawyer punished only because he and not the trial judge correctly applied a Supreme Court opinion, *Lyng*, to a set of facts. If trial judges are to have such power to abuse lawyers with whom they have intellectual disagreements, there is no rule of law in the federal courts but only Star Chamber type discretionary proceedings. Bracton famously wrote: "***non sub homine, sed sub deo et lege***" *De Legibus*, Vol 2, p. 110.

No question can be more delicate and of greater importance to the administration of justice in this country than the way in which federal judges – unelected and appointed for life – use their discretionary powers.

Facilitating such overreaching among federal trial judges was a concern of Justices Rehnquist, Kennedy and Souter of this Court in their dissent to the opinion in *Chambers v. NASCO*. *Chambers* at 67-69 and footnote 11 at 47. Judge Rosenbaum's punitive actions towards Petitioner confirm that the worries of those Justices over the consequences of *Chambers* were not fanciful. Unchecked judicial power has indeed "chilled the advocacy of litigants attempting to vindicate ... other important federal fights." *Chambers*, at 68. *Chambers*, in this case, has provided a trial judge with a means to yield to temptation in moments of displeasure with counsel – inherent *sua sponte* powers to make life very difficult for those in judicial disfavor and brought under the judge's power by the bad luck of an assignment calendar. *Chambers* opened the doors of judicial decision-making not only to sanctions based on good reasons and law, but to sanctions based on more vain and petty motivations as well.

Judge Rosenbaum's sanctions are a gross miscarriage of justice.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNTIED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Associated Contract Loggers, Inc.
and Olson Logging, Inc,

Plaintiffs,

Case No. 99 – 1485 JMR/RLE

vs. **COMPLAINT**

United States Forest Service,
Superior Wilderness Action
Network, and Forest Guardians,

Defendants

For their complaint, the above-named Plaintiffs state and allege as follows:

JURSIDICTION AND VENUE

1. This action arises under the Constitution of the United States, Amendment 1, and 16 U.S.C. Sections 475, 528 and 529. Jurisdiction is conferred on this court by 28 U.S.C., Secs. 1331, 1361, and 2201. Venue is proper in the District of Minnesota where Defendant Superior Wilderness Action Network ("SWAN") resides and where actions of Defendant United States Forest Service ("USFS") occur.

INTRODUCTION

2. Plaintiffs seek to prevent the establishment of religion by Defendant USFS, or, at minimum, neutrality by Defendant USFS in matters of religious faith. The purpose of this action is to obtain declaratory and injunctive relief regarding the procedures to be used by Defendant USFS in managing forest lands owned by the United States of America in Minnesota and damages for failure to provide Plaintiffs, first, with adequate amounts of timber to log under established Available Sale Quantities ("ASQ") limitations, and second, reasonable winter access to timber on lands not owned by the United States of America. Defendants SWAN and Forest Guardians have constrained Defendant USFS to follow certain religious beliefs on the sacredness of trees and other natural flora and fauna such that Defendant USFS is complicit in the establishment of religion contrary to the provisions of the 1st Amendment to the Constitution of the United States.

PARTIES

3. Plaintiff Associated Contract Loggers ("ACL") is the only non-profit 501 (c) 6 business association of independent logging contractors and wood haulers in Minnesota. Its office is located at PO Box 300, Tower, Minnesota. ACL has 125 dues-paying members. Members of the ACL log timber on lands managed by Defendant USFS and then haul such timber to saw and paper mills. Members of ACL further require permission from Defendant USFS to build temporary winter roads over land managed by Defendant USFS to log timber owned by other persons. ACL has filed this complaint on behalf of itself and all of its members, and for the relief of damages, is the agent and attorney-in-fact of its individual members.

4. Plaintiff Olson Logging, Inc. ("Olson") is a business located in Orr, Minnesota, which logs timber. Plaintiff Olson

has contracted in the past with Defendant USFS to log timber on lands managed by Defendant USFS. Plaintiff Olson also contracts with the State of Minnesota Department of Natural Resources to log timber on lands owned by the State and managed by such Department. Plaintiff Olson must from time to time wait for Defendant USFS to grant permission to build winter roads so that Plaintiff Olson can log and transport from the forest timber owned by the State of Minnesota or other parties.

5. Defendant United States Forest Service ("USFS") is an arm of the United States Government established by 16 U.S.C. Sec. . It has its Minnesota headquarters in Duluth, Minnesota. Defendant USFS manages forest lands owned by the United States of America in Minnesota.

6. Defendant Superior Wilderness Action Network ("SWAN") is a non-profit entity with a business address at 2052 Carroll Ave., St Paul, MN 55104. Defendant SWAN has brought judicial action against Defendant USFS to stop, delay, hinder, postpone or otherwise impede sales of timber and the construction of temporary winter roads.

7. Defendant Forest Guardians is a non-profit entity with a business address at 1413 Second St, Santa Fe, New Mexico 87505. Defendant Forest Guardians has intervened in proposed sales of timber put out for bid by Defendant USFS to prevent such sales. Defendant Forest Guardians makes a "constant effort to end commercial logging on public lands and stop aspen clear-cutting by the USFS." Defendant Forest Guardians seeks to "rewild" public lands.

Duties of Defendant USFS

8. Pursuant to 16 U.S.C. Secs 475, 528, and 529, Defendant USFS has the duty to manage national forest lands in Minnesota owned by the United States of America for the purposes of: securing favorable conditions for water flows, for a continuous supply of timber for the use and necessities

of citizens of the United States, and in addition, for the purposes of outdoor recreation, range, timber, watershed, and wildlife and fish purposes, and further, for the purpose of developing and administering the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom.

9. Defendant USFS has no duty to turn nation forest land under its management into wilderness habitat burdened with severe restrictions on human use and enjoyment, by among other things, placing such land in Research Natural Areas or special management Complexes. Land owned by the United States of American can only be converted to wilderness with limitations on human use and enjoyment through compliance with 16 U.S.C. Sec. 1131 et seq. Non-wilderness lands managed by Defendant USFS are open to all purposes set forth in 16 U.S.C. Secs. 475, 528 and 529.

10. Defendant USFS may not establish any religion, or show favoritism to any religion, through its management of lands owned by the United States of America. See Constitution of the United States of America, Amendment 1.

Breach of Duty by Defendant USFS

11. Since 1997 Defendant USFS has breached its foregoing duties to the damage of Plaintiffs.

12. Under its 1986 approved forest management plans, Defendant USFS proposed to offer annually for sale to the public 97 million board feet of timber to be logged by Plaintiff ACL and its members from the Superior National Forest and an additional 79.3 million board feet of timber from the Chippewa National Forest, also to be logged by Plaintiff ACL and its members. However, the actual amounts of timber provided for public sale have been: in 1997, only 58,865,000 board feet from the Superior National Forest and 52,125,000 board feet from the Chippewa National Forest; in 1998, only 57,208,000 board feet from the Superior National

Forest and 60,376,000 million board feet from the Chippewa National Forest.

13. Timber sold from lands managed by Defendant USFS declined from 200 million board feet in 1993 to 155 million board feet in 1996. Then, in 1996 the supervisors of the national forests managed by Defendant USFS in Minnesota stated that "The National Forests of Minnesota have reduced commercial timber sales volume offered to the public to a level below each Forest's ASQ, and expect that timber volume to remain below the ASQ indefinitely."

14. Nationally, the amount of wood fiber harvested from national forests under management by Defendant USFS fell from 12 billion board feet in 1989 to only 3.3 billion board feet in 1998.

15. Plaintiff ACL and its members have suffered financially from reduced volume of timber supply as a result of actions and decisions taken by Defendant USFS. Some ACL members were forced to acquire logging rights from non-federal owners at higher costs. Others had their volume of business reduced as other logging opportunities did not materialize.

16. Second, Defendant USFS has delayed temporary access to winter logging jobs through regulatory burdens impeding the granting of special use permits. For example, in January 1999, Defendant USFS delayed giving permission for the opening of a temporary winter road into the area of the Little East Creek Timber Sales under timber sale permits issued by the State of Minnesota, Department of Natural Resources. As a result, Plaintiff Olson had insufficient time to remove timber harvested under contract in Little East Creek. Plaintiff Olson lost 1900 cords of harvested Aspen which could not be removed and sold to Boise Cascade and 730 cords of pine which could not be removed and sold to Northern Lights Timber Co. This delay in giving special use permits is new. Previously Defendant USFS has never found reasons to deny special use permits. Where it once took only 6 months for

Defendant USFS to give a special use permit for temporary access to logging cites, it will now take 2 to 3 years of study and dispute, all caused by interventions and pressure brought about by Defendants SWAN and Forest Guardians.

17. Defendant USFS has failed in its duty, first, to provide Plaintiffs with sustained yields of timber for public sale and, second, to provide timely access to non-federal owned land through special use permits.

18. Third, Defendant USFS threatens to allow any challenge to a timber sale, even challenges masking suspect religious motivations, to stop the sate of timber. On June 8, 1999, Ann Bartuska, Director of Forest Management for Defendant USFS, sent a memo to regional foresters employed by Defendant USFS stating in part as follows:

> "If litigation is filed challenging a timber sale decision:
> 1. Do not undertake presale preparation activities such as marking designation of timber, cruising, signing of sale area or unit boundaries, posting boundaries of areas needing protection or surveying. Discontinue any such activity if already in progress;
> 2. Do not advertise a sate that has been fully prepared and is ready for advertisement;
> 3. Do not open bids if the sale has been advertised, but cancel the advertisement and return unopened bids;
> 4. Do not designate an apparent high bidder;
> 5. Do not award a contract;
> 6. Do not conduct the above activities on other sales if the regional forester determines that there is a high probability of these sales being added to the litigation"

The memo was withdrawn on June 10, 1999, but where it was to be reissued at a later date with "further instructions". Since Defendant Forest Guardians as a rule litigates every sale of timber in Minnesota, this policy of Defendant USFS turns over to Defendant Forest Guardians dispositive control of the

sale of timber - a public asset - from national forests in Minnesota.

Unconstitutional Promotion of Religion

19. Defendant USFS has been derelict in its duties under 16 U.S.C. Secs 475, 528 and 529 because it has, at a minimum, shown favoritism to the religion of Deep Ecology as manifested in the actions and demands of Defendants SWAN and Forest Guardians, and at a maximum, cooperated with such Defendants in establishing the premises of Deep Ecology as part of government management of national forests in Minnesota. Defendant USFS has allowed itself to be used as a tool, agent, or instrument of Defendants SWAN and Forest Guardians for religious purposes.

20. Defendant USFS has made no determination, nor has it asked any court with appropriate jurisdiction to make such a determination, that the demands and intentions of Defendants SWAN and Forest Guardians serve a compelling interest of the United States of America and that the measures chosen by Defendant USFS to meet the demands of Defendants SWAN and Forest Guardians are narrowly drawn to meet the requirements of such compelling interest.

21. The purpose of Defendant SWAN is to stop logging in Minnesota. SWAN believes in the creation of natural reserves within which limited or no human access or interference with natural forces is permitted. Since its formation SWAN has advocated no commercial logging in national forests. SWAN seeks to replace long-standing uses of national forests and other lands with a biodiversity reserve system based on the core-buffer-corridor model.

22. SWAN is guided by the premises and beliefs of Deep Ecology. The President of SWAN is Bill Willers of Oshkosh, Wisconsin, who has edited two books of deep ecological thought - *Learning to Listen to the Land and Environmental Thought*. The Advisory Board of SWAN contains such

proponents of wildness, re-wilding northern Minnesota, wilderness and deep ecology as Reed Noss of Corvallis, Or., Michael Soule of the Environmental Studies Board, U. of California, Bron Taylor, Director of Environmental Studies, University of Wisconsin, Oshkosh, Wisconsin, and Michael Zimmerman of Office of the Dean of Letters and Science, University of Wisconsin, Oshkosh, Wisconsin.

23. Deep Ecology is a religious belief system, akin to Native American religions, which places nature at the center of creation and defines the individual human beings relationship to his or her creator as the same as the relation of a rock, a tree, flowing water, a deer, a Canadian Lynx to creation. Deep Ecology seeks to change the spiritual understanding of people about their lifestyles and their environment. Deep Ecology wants people to have a come to nature experience instead of a come to Jesus, Allah or Buddha experience as the core of their faith in this life. Deep Ecology provides a complete, complex explanation of the cosmos and creation as religions do in order to give humans a sense of purpose and meaning in their lives. Deep Ecology is a rival to such religious texts as Genesis from the Old Testament of Judeo-Christian tradition. It is a religion similar in many beliefs to the neo-pagan religions of Druid practices, Wicca and Gaia worship. Deep Ecology has appropriated religious practices of Native Americans.

24. Deep Ecology focuses on the individual, on each person looking at himself or herself and becoming more real. More and more deeply, the individual questions himself or herself the assumptions on which the dominant world-view of our culture is based, and on the meaning and truth of our reality. This leads to a slowing down, a liberation from the frenzy of busy-ness, so that life is lived on a more even tempo and the individual can progress in working out his own salvation.

25. Deep Ecology goes beyond factual, scientific issues to the level of self and earth wisdom; new outlooks on political and social policy are generated, which go beyond simple

scientific consideration of ecological matters. Finally, the body dies and the components of this temporary organism may become parts of unknown future beings.

26. Deep Ecology portrays itself as "deep" because it asks deeper questions about the place of human life and who we are.

27. The beliefs of Deep Ecology are also reflected in the Religious Campaign for Forest Conservation, an interfaith forest ethic to articulate a right relationship to forests and wild areas from a religious perspective. The Episcopal Diocese of Minnesota Environmental Stewardship Commission considers the Boundary Waters Canoe Area wilderness part of the Chippewa National Forest to be "sacred ground". The Christian Environmental Council seeks the end of all commercial logging on US National forests because, it believes, Christian Scriptures clearly teach that forests are a place where God is present and cares and provides for his creatures who inhabit them. The Leadership of National Religious Partnership for the Environment believes that "environmentalism started with Genesis, not Earth Day."

28. SWAN's Executive Director, Ray Fenner, points out the religious aspects of saving forests from logging in everything he does.

29. Defendant Forest Guardians also is guided by the premises and beliefs of Deep Ecology.

30. Both SWAN and Forest Guardians have intervened in timber sales proposed by Defendant USFS in Minnesota to delay or halt such sales. SWAN filed a successful appeal which halted the Greenwood Timber Sale in Superior National Forest in Minnesota. SWAN initiated the Little Alfie campaign to halt another timber sale in Superior National Forest. Defendant Forest Guardians has intervened to stop, delay or hinder timber sales in the Beaver River Timber Sale of June 1998, the Behind the Ridge Timber Sale of July 1998, Echo River Sale of February 1998, the Red Pine Thinning Project of August 1998, the Rusty Diamond sale of

September 1998, the Sassas Timber Sale of August 1998, and the Sawbill Camp Sale of July 1998. SWAN filed a lawsuit against Defendant USFS for granting temporary winter road access to timber in Little East Creek area.

31. The tactics used be Defendants SWAN and Forest Guardians have placed great administrative burdens on Defendant USFS in Minnesota so that sales of timber are postponed, delayed or abandoned. Payment by Defendant USFS of legal fees in the Beaver River sale litigation was charged to the timber sale program, discouraging Defendant USFS from putting up timber for public sale. The environmental analysis for the Little East Creek road permit, a permit challenged by Defendant SWAN, has cost the Superior National Forest unit of Defendant USFS over 30% of its Fiscal Year 1998 special uses budget and is still incurring costs in Fiscal Year 1999.

32. Such postponement, delay and abandonment have caused Defendant USFS to breach its duty to provide Plaintiffs with timber and temporary access roads in a timely manner. The interaction of Defendants with one another is creating de-facto wilderness in the national forests contrary to the Constitution and laws of the United States of America. Tactics used by Defendants SWAN and Forest Guardians to interfere with the decision-making process of Defendant USFS constitute devices to deceive in the nature of smokescreens and subterfuges about the religious purposes advanced by such Defendants contrary to Federal Constitutional guarantees that federal power will not be used to favor or establish any religion or religious beliefs.

33. Such postponement, delay and abandonment have further caused Defendant USFS to impose upon Plaintiffs and all other persons the consequences of a belief in Deep Ecology, thereby favoring one religion over another and thereby promoting the establishment of a religion contrary to the Constitution of the United States.

34. Contrary to the express provisions of 16 U.S.C. Secs 475, 528 and 529, Defendant USFS recognizes that promotion of spirituality is one of its goals in management of lands owned by the United States. If that were so, then the Constitution of the United States commands that all spiritual traditions and belief be given equal treatment by Defendant USFS. The teachings of Deep Ecology may not be favored over other religious teachings on the relationship between human purposes in this life and nature. Yet, the Superior National Forest, LaCroix Ranger District of Defendant USFS in Cook MN, believes that "...trees and forests have been important in mythology and religions of many cultures. This is especially true of the spiritual value of old and mature trees because many people sense them to be the link between earthly life and realm of the divine." Mike Dombeck, Chief of Defendant USFS in February 1999, stated that "spiritual values" have become more and more important as national goals for management of national forests by Defendant USFS. On March 28, 1999, the same Mike Dombeck announced that conservation biology would be the first priority of Defendant USFS in the future. On June 12, 1999 Defendant USFS issued the first draft of planning regulations making conservation biology and ecological sustainability the first priority on national forests. The draft stated that "the fundamental goal of the National Forest System is to maintain and restore ecological sustainability, the long term maintenance of the diversity of native plant and animal communities, and the productive capacity of ecological systems." This plan shifts Defendant USFS away from multiple-use of national forests in line with the theological dictates of Deep Ecology on the sanctity of non-human nature. Now, Defendant USFS is to regulate entire ecosystems outside the geographic boundaries of national forests to protect ecological areas by corridors of natural or semi-natural habitats. Only outside such protected areas will managed forests and industry be allowed.

DAMAGES

35. Plaintiff ACL and its members has been damages by lost income from reduced harvesting of timber on lands managed by Defendant USFS. Plaintiff ACL and its members were denied timber in the amount of 124.2 million board feet for a net loss of $550,000.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
99-CV-1485 (JMR/RLE)

Associated Contract Loggers, Inc., et al.	)	
v.	)	ORDER
United States Forest Service et al.	)	

Defendants move to dismiss this case, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."). Oral argument was heard on January 14, 2000.[1] The defendants' motions are granted, and the cause is dismissed with prejudice. Further, because this Court is concerned as to plaintiffs' and their counsel's bona fides in initiating and prosecuting this lawsuit, the Court issues an Order to Show Cause why sanctions ought not be imposed.

I. Background

Plaintiffs are Associated Contract Loggers, Inc., and Olson Logging, Inc. Each claims to be involved in Northern Minnesota logging. Plaintiffs bring this action against the United States Forest Service ("Forest Service" or "USFS") and two private, nonprofit organizations: the Superior

[1] Defendants moved, pursuant to D.Minn.LR 72.1 (b) (1) (B), to deny plaintiffs oral argument as a sanction for plaintiffs' admitted failure to comply with the District of Minnesota's briefing schedules. Such neglect needlessly complicates the work of both opposing counsel and the Court. Notwithstanding this lapse, the Court allowed plaintiffs to participate in oral argument.

Wilderness Action Network ("SWAN") and Forest Guardians (collectively, "nonprofit defendants").

While plaintiffs' complaint is far from crystal clear, it appears to claim defendants, acting in concert, violated the Establishment Clause of the United States Constitution. Specifically, plaintiffs claim the nonprofit defendants have attempted to suborn or coerce the USFS into imposing a set of religious beliefs called "Deep Ecology."

Plaintiffs claim the nonprofit defendants have influenced the Forest Service's decision-making in matters of forest management. In plaintiffs' view, the nonprofit defendants' efforts to influence the USFS have converted them from private parties into state actors for constitutional analytic purposes. Plaintiffs further claim the USFS has acquiesced in the nonprofit defendants' actions. The complaint states, and for purposes of this Rule 12 motion the Court must assume, that the nonprofit defendants' actions are actually motivated by a form of nature worship.

II. A Rule 12 Motion

In considering these motions, the Court is ever mindful of its obligation to assume the facts set forth by plaintiffs as true, and that a complaint "should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45 (1957). Nonetheless, granting a motion to dismiss is appropriate when a complaint, even taken as true, and considered in light of applicable law, shows an insuperable bar to relief. See, e.g., Leggett v. Montgomery Ward & Co., 178 F.2d 436 (10th Cir. 1949). Throughout this Order, the Court does not determine the accuracy of plaintiffs' factual allegations, but instead focuses solely on the legal import, or lack thereof, of those facts. With that approach in mind, the Court concludes plaintiffs' claims cannot proceed.

III. The Nonprofit Defendants

Taking the plaintiffs' well--pleaded facts as true, the Court easily finds all claims against the nonprofit defendants must be dismissed for two fundamental reasons. First, notwithstanding plaintiffs' assertions, the nonprofit defendants are not, and cannot be under plaintiffs' pleadings, state actors. Second, the nonprofit defendants are immune from this kind of suit under the Noerr-Pennington doctrine.[2]

A. State Action

The establishment clause of the United States Constitution prohibits governmental actions which support or establish religious beliefs. See United States Constitution Amend. I ("Congress shall make no law respecting an establishment of religion . . . ."); Montano v. Hedgepeth, 120 F.3d 844, 848 (8th Cir. 1997); see also United Bhd. Of Carpenters & Joiners of America v. Scott, 463 U.S. 825, 831 (1983).

Plaintiffs' complaint recognizes that SWAN and Forest Guardians are nonprofit entities, and neither is part of the state or federal government. Nonetheless, plaintiffs claim the nonprofit defendants have so entangled themselves in the Forest Service's affairs that they must be considered state actors for purposes of this lawsuit. Plaintiffs assert, "Defendant USFS has allowed itself to be used as a tool, agent, or instrument of Defendants SWAN and Forest Guardians for religious purposes." Complaint at 7. This somewhat bizarre assertion is neither supported in law nor in the complaint's own factual allegations.

[2] The Court, in a later portion of this opinion, focusing directly on the United States Forest Service, finds this matter is not currently justiciable. This same determination is fully applicable to the nonprofit defendants.

Plaintiffs' brief opposing dismissal misapprehends the concept of state action. Plaintiffs cite cases irrelevant to the issue. For example, plaintiffs cite the well-known case of Shelley v. Kraemer, 334 U.S. 1 (1947), where the United States Supreme Court found a state court's order enforcing a racially-discriminatory private covenant which restricted real estate sales to be a state action. Plaintiffs do not seem to understand that, however misguided, the private parties' contract was not the state action barred in Shelley. The state action was the court's order enforcing the private parties' racially-discriminatory covenants. While Shelley is undoubtedly an important case, it says nothing about whether a nonprofit private party, which advocates and petitions a federal agency, becomes a state actor. Neither Shelley, nor any case cited by plaintiffs, supports a claim of state action on the part of the nonprofit defendants.

To the contrary, both the Congress and the courts permit private parties, irrespective of their religious views, to participate in the public's discourse over forest and natural resource use. The Congress has explicitly allowed public participation in the administrative process before any major use of federal lands and resources is allowed. See, e.g., National Environmental Policy Act, 42 U.S.C. §§ 4331, 4332. This participation is encouraged in order to give meaning and flesh to the additional First Amendment constitutional protection: the right to petition for redress of grievances. Similarly, the courts have remained open to private parties seeking to protect -- however that term is defined -- natural resources. See, e.g., Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726 (1998); Sierra Club v. United States Forest Service, 93 F.3d 610 (9th Cir. 1996).

In order for a party's acts to be deemed state action, a court must consider: (1) whether the claimed constitutional violation resulted from the exercise of a right having its source in state authority, and (2) whether the private parties (here, SWAN and Forest Guardians) charged with the

deprivation could be described in all fairness as state actors. See Edmonson v. Leesville Concrete Co., 500 U.S. 614, 620 (1991). Plaintiffs have entirely failed to plead facts which support either element.[3]

A private party does not become a state actor by the "mere invocation" of legal procedures. Such an act does not satisfy the first element of the test. See Lugar v. Edmonson Oil Co., 457 U.S. 922, 939 n.21 (1982); see also Cobb v. Georgia Power Co., 747 F.2d 1248, 1251 (11th Cir. 1985). The mere use of legal procedures cannot suffice; there must be an affirmative governmental action encouraging the private action. Simple governmental permission to participate in a consultative process is not sufficient. Here, the laws and administrative practices which deal with forest use allow private-party input; this is no more than the "mere invocation" of procedures which is fully permitted and protected. Plaintiffs' complaint sets forth no factual allegations which could conceivably support any claim that the nonprofit defendants did anything other than invoke statutory rights.

Plaintiffs correctly acknowledge the nonprofit defendants' frequent participation in adversarial proceedings against the USFS. See complaint at 10 ("The tactics used be [sic] Defendants SWAN and Forest Guardians have placed great administrative burdens on Defendant USFS in Minnesota so that sales of timber are postponed, delayed or abandoned."); id. at 9-10 (listing appeals and lawsuits brought by the nonprofit defendants challenging USFS actions). The Court considers that these allegations actually undermine any claim of governmental encouragement. The cited instances

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[3] Plaintiffs' memorandum in opposition to motions to dismiss at 14 suggests that defendants' cited state-action cases were inapplicable in an Establishment Clause context. This suggestion was spurious. See Capitol Square Review Board v. Pinnette, 515 U.S. 753, 766-67 (1995) ("By its terms [the Establishment] Clause applies only to the words and acts of government.") (emphasis in original).

are events when, rather than working in concert with the USFS, the nonprofit defendants opposed and burdened the Forest Service. The complaint simply fails to allege any encouragement or endorsement by the government of the nonprofit defendants' activities.[4]

Plaintiffs have similarly failed to allege facts to support their claim that the nonprofit defendants could be described in fairness as state actors. Plaintiffs certainly claim the nonprofit defendants are active administrative process participants and litigants, but they fail to assert any facts to support the conclusion that they are, in fairness, appropriately described as state actors. The nonprofit defendants actively advocated for positions they espouse. They have prevailed and they have lost. See, e.g., complaint at 9-10. This simply makes them participants, not state actors.

Again, the nonprofit defendants' status as litigation opponents of the USFS militates against attributing their actions as state action. See Polk County v. Dodson, 454 U.S. 312, 324 (1981) (public defenders, even though paid by the state, are not state actors due to adversarial function). Plaintiffs do not claim the nonprofit defendants' lawsuits are collusive, or that the USFS and the nonprofit defendants are not genuine adversaries in those other matters. Plaintiffs' complaint, in fact, makes clear that the nonprofit defendants have placed a burden on the USFS, and plaintiffs allege this burden has caused the USFS to scale back logging activities -- thus depriving plaintiffs of as much logging as they believe is appropriate. See complaint at 9-10. These allegations are

[4] As in Section II, above, the Court clearly recognizes that a Rule 12 (b) (6) motion is not the time to resolve factual disputes. But it is a time to determine whether the challenged party has pleaded any facts setting forth a claim on which relief may be granted. Here, the Court is not resolving a factual dispute; indeed, it is taking the plaintiffs' assertions as true. Plaintiffs' problem is that, even taking their complaint as true, they have failed to state a claim on which relief may be granted.

inimical to plaintiffs' assertion that the nonprofit defendants' actions are those of the state.

Thus, neither the "state authority" nor the "in all fairness" state actor factors set forth in Edmonson v. Leesville Concrete Co. have been alleged by plaintiffs in a manner which states a claim upon which relief can be granted, within the contemplation of Rule 12(b)(6). As a result, no colorable claim premised on the Establishment Clause has been pled against the nonprofit defendants. Accordingly, the state action claims against the nonprofit defendants must be dismissed.

B. Noerr-Pennington

Plaintiffs seem to completely misapprehend the Constitution's protection of a citizen's right to petition the government for redress of grievances. This protection inheres whether the petitioner is a single person or a collective group commonly advocating for their views.[5]

In analyzing this portion of plaintiffs' complaint, the Court does assume as true plaintiffs' rather problematic assertion that the nonprofit defendants are actually adherents of the Deep Ecology religion. After making this assumption, however, plaintiffs urge the Court to accept, as an actionable claim, the stunning proposition that the Constitution protects only a religious group's rights to ineffective petition. According to plaintiffs, once the religious group's petition actually seeks to accomplish something -- and to press its beliefs into actions -- the religious group moves beyond the

[5] It is irrelevant whether the nonprofit defendants approach the USFS in administrative proceedings or the courts singly or in a group. The Constitution's First Amendment protects the right of individuals to freely associate with others of their choosing. See, e.g., NAACP v. Alabama, 357 U.S. 449, 459 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association . . . .").

ambit of the First Amendment's protection of the right to petition.

Plaintiffs astound the Court when they assert that the First Amendment does not protect effective petitioning activities, stating -- without citation to any authority whatsoever -- that "[o]nce defendants act on their beliefs - more importantly - once defendants seek to involve the government in enforcing their beliefs, they cross the line separating valued and protected freedoms from unconstitutional manipulation of the government's police powers." Plaintiffs' memorandum in opposition to motions to dismiss at 3 (emphasis in original).

This assertion is so clearly wrong as to beggar conventional legal analysis. The right to petition is absolutely fundamental to the First Amendment. "To hold . . . that people cannot freely inform the government of their wishes would . . . be particularly unjustified." Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 137 (1965); accord NAACP, 357 U.S. at 459. The Constitution itself even makes it more clear: Citizens have the right "to petition the Government for a redress of grievances." It is beyond conception that this cherished right is so cabined that it is lost at the very moment the petition might possibly achieve success.

Even assuming the nonprofit defendants are advocates of a religion's precepts, the Court finds no support for the proposition that the right to petition is restricted to citizens whose motivation is only secular. No such restriction is found in the words of the Constitution. Plaintiffs have cited no authority to support their argument to the contrary, because none exists. Freedom of belief is not a passive right: citizens are not limited to merely sitting idly thinking about their political, moral, and religious beliefs; democracy is founded upon them acting upon those beliefs in efforts to effect change. See generally Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v.

Amos, 483 U.S. 327 (1987); Walz v. Tax Commission, 397 U.S. 664 (1970).[6]

Not surprisingly, with these flawed assumptions at their core, plaintiffs' arguments with respect to the Noerr-Pennington doctrine fail. The Noerr-Pennington doctrine implements the First Amendment's protections by barring claims against litigants "for injuries allegedly caused by activities and participation in public processes with the intent of influencing public policy decisions." Fischer Sand and Aggregate v. City of Lakeville, 874 F. Supp. 957, 959 (D. Minn. 1994); see also Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961). On its face, this doctrine immunizes the nonprofit defendants from plaintiffs' claims, as the activities complained of are prima facie protected petitioning activity.

There is an exception to the Noerr-Pennington doctrine. The doctrine excepts those whose claims were not filed with the true intent of influencing public policy, but whose true intent was a sham. In such a case, claims can be allowed against a party whose legal actions were objectively and subjectively meritless. See Fischer Sand, 874 F. Supp. at 959. But plaintiffs' complaint makes no such assertion. Their only reference to this Noerr-Pennington exception is found in their responsive brief opposing dismissal.

Plaintiffs' belated assertion of sham by the nonprofit defendants falls far short of the mark. In order to place the nonprofit defendants beyond the Noerr-Pennington doctrine, plaintiffs must overcome a high hurdle. They must show that the nonprofit defendants' actions were "objectively meritless in the sense that no reasonable [person] could realistically expect success on the merits"; they must also show that the

[6] The motion hearing transcript will reveal at least one stunning moment. This occurred when plaintiffs' counsel suggested that, whenever an arguably religious-based claim is asserted, the Court ought to make a threshold determination and decide whether the claim is religiously based. If so, he urged the Court to deny the religious litigant access to relief.

actions were undertaken in bad faith (the subjective element of the test). Fischer Sand, 874 F. Supp. at 960. The plaintiffs have failed to meet this test.

Plaintiffs' complaint shows the futility of their position. Rather than having made "objectively meritless" claims, they acknowledge that on several occasions, the nonpublic defendants' efforts to influence public policy have succeeded. See, e.g., complaint at 9 ("SWAN filed a successful appeal which halted the Greenwood Timber Sale in Superior National Forest in Minnesota."). Plaintiffs do not allege that any of the nonprofit defendants have ever been sanctioned under Fed. R. Civ. P. 11 or otherwise for bringing frivolous actions, or that any of the nonprofit defendants' actions have ever been described by the USFS or the courts as shams. This record of success simply vaporizes plaintiffs' claims that the nonprofit defendants' actions were "objectively meritless," and that "no reasonable [person] could realistically expect success" on them. The nonprofit defendants not only realistically expected success; they at times, achieved it. A successful claim is, as a matter of logic and of law, not meritless. See Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 508 U.S. 49, 58 (1993).

The plaintiffs, therefore, have not satisfied the objective test which could invoke the sham exception to the Noerr-Pennington doctrine. They have, similarly, failed to deny that the nonprofit defendants were attempting to influence governmental actions which could implicate the sham exception's subjective element. Instead, plaintiffs again focus on their allegation that the nonprofit defendants' motivation was religious. This allegation fails to help the plaintiffs, because a religious motivation is not now, and has never been, any bar to Noerr-Pennington protection. The Court finds that plaintiffs' claim of a sham exception to the Noerr-Pennington doctrine is entirely inapplicable. Plaintiffs' desperate efforts to smear the nonprofit defendants with the sham brush is both unseemly and unavailing.

In short, the Court finds that the Constitution's Establishment Clause does not trump its right to petition and the right to free exercise of religion, including the right to express those beliefs to governmental officials. As the Court noted at oral argument, many of the parties involved in social and political advocacy in this country have been motivated and inspired, at least in part, by religious views. The concept of a court's prescreening a party's religious views, and requiring them to prove that its claims are not religiously based, is disturbing, and runs counter to the protections set forth by the Constitution. It is a concept which this Court will not endorse.

Accordingly, because plaintiffs have failed to establish state action or any inapplicability of the Noerr-Pennington doctrine respecting the nonprofit defendants, their motions to dismiss are granted. Because these flaws in plaintiffs' lawsuit are of constitutional dimension and cannot be corrected by amending the complaint, this dismissal is with prejudice.

IV. United States Forest Service

After review of the plaintiffs' claims, the Court finds, in light of Rule 12(b), that plaintiffs have failed to recognize and acknowledge applicable law respecting the Forest Service. Their claims against the USFS fail because (a) this matter is not justiciable under Article III of the Constitution; (b) plaintiffs have abandoned any claim for breach of statutory duty; and (c) plaintiffs have failed to state a claim under the Establishment Clause.

A. Justiciability

The Constitution, itself, makes clear that a federal court may only exercise its powers when there exists a "case or controversy" within the meaning of Article III. "A justiciable controversy is . . . distinguished from a difference or dispute

of a hypothetical character; from one that is academic or moot. The controversy must be definite or concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy, admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240-41 (1937). No such dispute exists here.

Plaintiffs recite a series of past logging disputes between the USFS and the nonprofit defendants. After invoking this history, they ask the Court to bring its injunctive power to bear on future logging disputes. But plaintiffs do not claim any present logging dispute. The prior actions are complete; all appeals and other legal challenges have either been concluded or waived. Under these circumstances, the Court cannot -- and indeed, is constitutionally prohibited from attempting to -- speculate or opine concerning future disputes.

Plaintiffs' only response to this objection is a statutory citation to 28 U.S.C. § 1331, and cases based upon it. This "reply" is entirely unavailing. There is no doubt that § 1331 touches subject matter jurisdiction. At the same time, it is axiomatic that a statute cannot trump the Constitution, which is the supreme law of the land. No statute obviates Article III's requirement of a case or controversy. Whether or not the Court can, in fact, discern the beliefs of Deep Ecology, and even if the Court could anticipate future actions (Heavens (or Deep Ecology) knows it couldn't have anticipated this one), this case is simply not ripe. Plaintiffs attempt to reply by making the facile observation that defendants "are all over the [I]nternet and in the public press." Plaintiffs' memorandum in opposition to motions to dismiss at 20. Even assuming this to be true, it in no way creates a case or controversy where none exists.

Plaintiffs' arguments, if they relate at all to justiciability, misapprehend this Court's power: a federal court cannot, and

will not, act absent a live and current dispute. None is present here. The Court recognizes that it might be able to hear a case where there is a dispute which is "capable of repetition, yet evading review." City of Los Angeles v. Lyons, 461 U.S. 95, 109 (1983). But plaintiffs have nowhere alleged that this is such a dispute. Even absent such an allegation, the Court considers, as dicta, that since each of the Forest Service's actions are particular forest and site specific, this slender exception would likely be unavailable here.

Absent any case or controversy, as is mandated by the Constitution, each claim against these defendants must be dismissed.

B. Statutory Claims

Plaintiffs have disavowed any claims based on the statutes which control the USFS's actions, including the Organic Act of 1897 or the Multiple-Use Sustained Yield Act of 1960. See plaintiffs' memorandum in opposition to motions to dismiss at 17. Plaintiffs have apparently taken this position to withdraw their claims entitled "Breach of Duty by Defendant USFS." Complaint at 4-6. In that portion of their complaint, plaintiffs appeared to assert the USFS had acted in breach of numerous duties purportedly imposed by statute. But now, in light of the plaintiffs' late abandonment of any possible statutory claims (and to whatever extent a private cause of action might accrue therefrom -- a highly questionable proposition), any possible claim is dismissed.

C. Establishment Clause

Finally, the Court determines that plaintiffs have entirely failed to state a claim under the Establishment Clause. The United States Supreme Court has delineated the test to be applied to Establishment Clause claims. Under Lemon v. Kurtzman, 403 U.S. 602 (1971), a court must ask three

questions when considering such a claim: (a) Does the government action have a secular legislative purpose? (b) Is the action's primary effect either to advance or inhibit religion?, and (c) Does the action foster excessive government entanglement with religion? See id. at 612-13. As plaintiffs have challenged the Forest Service on Establishment Clause grounds, the Lemon test must be applied here.

Plaintiffs' complaint sets forth no facts which demonstrate that the USFS's purpose in regulating forest use was anything other than secular. Their conclusory assertions that the Forest Service's actions were taken to implement or impose the teachings of Deep Ecology -- without any factual allegations in support -- do not, and could not, permit any finding upon which relief could be granted. Even under the liberal pleading standards of Conley v. Gibson, 355 U.S. 41 (1957), plaintiffs' bare assertions lack the substance to satisfy this element.

Further, there is no fact alleged which shows the USFS's forest-use actions primarily advanced or inhibited religion. It is a sophistry to say the nonprofit defendants' religion disfavors logging; the Forest Service sometimes does not allow logging; and therefore, the Forest Service had taken a position advancing religion. This is as illogical as saying that if a tall man advocates a position, and the government takes a position in accord with the tall man's wishes, it therefore follows that the government has necessarily established the views of tall men.

Beyond this wholly insubstantial argument, the Court takes judicial notice of instances where the USFS enthusiastically litigated against the nonprofit defendants -- and others alleged by plaintiffs to also advocate Deep Ecology -- in forest management decisions, sometimes winning and sometimes losing. The public record, which can be considered in motions to dismiss, see Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999), is clear

that the USFS sometimes takes positions which are congruent with, and sometimes incongruent with, those taken by the nonprofit defendants. Plaintiffs' own complaint recognizes this. See complaint at 9-10. A governmental decision coinciding with the desires of a religious group does not automatically constitute the primary advancement of that religion.

Finally, the Court finds no allegation in the complaint to support a claim that the USFS's actions foster excessive entanglement with religion. The Forest Service acts, as it is required by law to do, as an arbiter of forest management decisions. Even if the nonprofit defendants were religiously motivated, they are simply player-participants in the forest management process.[7] If the Court were to rule that the nonprofit defendants' religion barred them from participating in the USFS's activities, the Court would necessarily become excessively entangled in deciding which religious believers could -- and could not -- advocate to influence governmental policy.

Because plaintiffs have failed to satisfy any of Lemon's requirements, the USFS motion to dismiss must also be granted.[8] Again, because the flaws in plaintiffs' claims are fundamental and irreparable through amendment, this dismissal is also with prejudice.

V. Sanctions

A Court possesses inherent power to sanction conduct that is inappropriate and frivolous. See Chambers v. NASCO,

[7] The Court notes, parenthetically, that the plaintiffs do not allege that they participated in the administrative process in the forest management matters of which they now complain.

[8] The USFS has also argued that plaintiffs' failure to plead facts to overcome sovereign immunity dooms their request for damages. Because the Court's rulings herein are dispositive, it does not reach the sovereign immunity question.

Inc., 501 U.S. 32 (1991). Despite plaintiffs' protestations to the contrary, this lawsuit seems to be designed to harass and delay the defendants, in particular, the nonprofit defendants, in the exercise of their constitutionally-protected rights.[9] It appears probable that Plaintiffs have knowingly drawn this Court into an unseemly and baseless lawsuit, and has wasted the Court's time and the defendants' valuable time and money. It presently appears that this case falls far below the minimal standards of pleading and law which ought to be expected in a federal court practitioner.

With these preliminary observations in mind, but not yet established as findings, the Court invokes its inherent powers and those granted by Fed. R. Civ. P. 11, and issues an Order to Show Cause, directed to plaintiffs' attorney, to show cause to this Court why it ought not to impose sanctions against him for his frivolous and, perhaps, contumacious pleading. This response is returnable within 15 days of the issuance of this order.

V. Conclusion

Accordingly, IT IS ORDERED that:

1. Defendants' motions to dismiss [Docket Nos. 4, 8, & 10] are granted, and the matter is dismissed with prejudice.

2. The attorney for plaintiffs is ordered to show cause, within fifteen (15) days of this Order, why sanctions should not be imposed, pursuant to this Court's inherent powers, and under Fed. R. Civ. P. 11 for his actions in bringing this lawsuit.

[9] Such lawsuits have become known as SLAPP suits, where SLAPP stands for "Strategic Lawsuits Against Public Participation." See Greenwich Citizens Comm. v. Counties of Warren & Washington Industrial Development Agency, 77 F.3d 26, 29 (2d Cir. 1996).

Dated: February 8th, 2000

/s/
JAMES M. ROSENBAUM
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
99-CV-1485(JMR/RLE)

Associated Contract Loggers, Inc., et al.	)	
v.	)	ORDER
United States Forest Service et al.	)	

I. Background

The Court here considers imposing sanctions on an attorney, pursuant to Rule 11 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") and under its inherent powers, for having initiated and pursued a baseless and vexatious lawsuit. On February 8, 2000, in its ruling on the underlying action, the Court, sua sponte, issued an Order to Show Cause directing Stephen B. Young, counsel for plaintiffs, to reply as "respondent" and to show cause why sanctions ought not to be imposed.

Upon consideration of the complaint in this matter, the February 8, 2000, Order, the pleadings related to defendants' motion to dismiss, and respondent's submissions in reply to the Order to Show Cause, the Court finds it is compelled to impose sanctions against the respondent for failing to comply with Rule 11, and for initiating a lawsuit without any reasonable basis in law. In addition to his violation of Fed. R. Civ. P. 11, the Court finds respondent's filing such a baseless action to be inherently offensive to the orderly processes of law and of this Court. As a result, the Court imposes these

same sanctions in accord with its inherent powers. See Chambers v. NASCO, Inc., 501 U.S. 32 (1991).[1]

The factual background underlying this Court's Order to Show Cause is set forth in full in the Order issued February 8, 2000. See Associated Contract Loggers, Inc. v. United States Forest Service, 84 F. Supp. 2d 1029 (D. Minn. 2000).

II. The Response to the Order to Show Cause

The Court's Order, dated February 8, 2000, dismissed the matter on three separate grounds. First, the Court found there was no legal justification for respondent's claim that the nonprofit defendants were state actors susceptible to constitutional claims. That Order next determined respondent's assertion that the Noerr-Pennington doctrine did not apply to his claims to be without basis. It finally ruled that respondent's complaints about the nonprofit defendants' prior claims, asserted in cases which preceded his own, did not provide a justiciable Article III case or controversy. Mr. Young's response to the Order to Show Cause has obdurately

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[1] Respondent's response to the Order to Show Cause expressed concern at a submission in reply to his response filed by the nonprofit defendants in the underlying lawsuit. These parties filed a joint response to Mr. Young's submission.

The Court finds this concern inconsequential. After Mr. Young's submission, the defendants, understandably, secured copies of his pleading. One of defendants' counsel contacted the Court's staff to inquire whether they could submit a reply. The Court, through a clerk, indicated there was no requirement that they do so, but if they chose to, a response should be submitted within a week. The defendants did reply, and Mr. Young, without seeking leave, submitted a subsequent reply memorandum.

It is understandable that there is very little formal procedure for the extraordinary event of a Court's sua sponte Order to Show Cause why Rule 11 sanctions ought not to be imposed. The Court disregards the defendants' submission, but has read and considered each of respondent's submissions, including a 26-page attachment styled "Post-Modern Religion and Environmental Extremism."

refused to seriously discuss or provide a legally cognizable basis to support any of these concerns. In that regard, it is entirely nonresponsive.

Instead, respondent begins his response to the Order to Show Cause by reminding the Court that representing the plaintiffs-loggers' interests is an honorable act. See Memorandum in Response to Order to Show Cause that Sanctions Should Not be Imposed, at 2. There is no dispute about this fact.

Respondent next lists and identifies authors and authorities who suggest and opine that environmentalism has devolved into a kind of earth-centered or nature-totemic religion styled "Deep Ecology." See id. at 2-6. The fact that some sources have made these observations is not in dispute. The authors, however, are not before the Court, and are not bound by the obligations imposed by Rule 11 or inherent obligations to a Court before which they practice.

Respondent next suggests the Court is unfamiliar with, or has disregarded, the Supreme Court's decision in Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439 (1988). The Court declines to deal with the ad hominem insult encompassed in this assertion. Rather, the Court considers the ruling in Lyng.

III. The Lyng Case

In Lyng, the United States Supreme Court considered a claim by a group of Native Americans against the United States Forest Service. See id. at 441-42. The Native Americans claimed their religion considered a particular parcel of national forest to be sacred. See Id. at 442. The plaintiffs, based on the land's religious nature, sought to bar the National Forest Service from allowing construction of a road and permitting logging on the land. See id. at 443. The matter had been subjected to administrative review and was treated in the lower courts.

When the case was heard in the Supreme Court, the group's requested relief was denied. The Supreme Court held that the Forest Service, as a representative of the United States, was not barred from using its property as it deemed necessary and proper, regardless of the Native Americans' claim that it was sacred. See id. at 447-455. A contrary holding would have allowed a particular group's religious beliefs to be superior to the national interests of the United States. See id. at 451-52.

Mr. Young offers Lyng to show a basis for his request that this Court bar the Superior Wilderness Action Network and the Forest Guardians (the "nonprofit defendants") from pleading for relief in federal court or before federal administrative agencies. He suggests Lyng bars them from even initiating a challenge to a Forest Service proposal concerning land use, because their beliefs are religiously based. Finally, he suggests the United States Forest Service is prohibited from considering or accepting a religiously-based group's position because the proponent is faith-motivated.

Respondent misreads Lyng. His position is contrary to Lyng, to logic, and to law (not to mention barred by all of the bases set forth in the Court's prior Order). While Lyng clearly holds that private religious beliefs are not superior to the national interest, it cannot be read to support the underlying lawsuit. His position is contrary to Lyng, because that case nowhere implies that parties motivated by a religious impulse are preemptively barred from seeking relief against the United States or in the Federal Courts.[2] Lyng never suggests that its plaintiffs were improperly before the courts or that the religious underpinnings of their claims should deny them access to the courts. Further, respondent misstates Lyng's holding when he suggests it prevents the

[2] Any decision which would have barred faith-based legal actions would require significant reconsideration of the Noerr-Pennington doctrine, a line of cases not mentioned once in Lyng.

government from considering (or adopting conclusions which are similar to) the positions of groups motivated in whole or in part by religious views. See id. at 453-54. Indeed, the Court specifically emphasized that Lyng ought not be read to "discourage [the government] from accommodating religious practices." Id. at 454.

The Court notes that the underlying complaint in the present case does not assert that the nonprofit defendants' prior challenges to the Forest Service's actions presented religious arguments -- only that the arguments presented were motivated by the plaintiffs' religion.

Respondent's position is logically untenable. It assumes the nonprofit defendants are, in fact, acolytes of the Deep Ecology faith -- if, in fact, this religion exists at all. He reaches this conclusion by simply positing its truth. In support of this proposition, he grabs snippets of statements from various ecologically-oriented works, states that the works are religious tracts, and states, QED, that the nonprofit defendants are religious zealots who seek to spread their Deep Ecology faith and subvert the National Forest Service to their will. Even under the liberal pleading standards of Rule 12, this is insufficient. It lacks anything beyond bare assertions, and further, lacks facts to support an inference of improper behavior by the underlying defendants.

Mr. Young further weakens his argument by engaging in a logical fallacy which is frequently used to discredit political opponents; the technique is simple but pernicious. The proponent matches the voting record of his or her opponent with the voting record of a defined enemy. When the voting records are seen to be similar, the proponent claims the opponent is aligned with -- and is actually the same as -- the enemy. The logical flaw is seen, of course, when one recognizes that simple parallel behavior does not equal association. Persons may engage in similar or complementary behaviors for many reasons beyond identity.

The Court is willing to consider the possibility that the nonprofit defendants may, in fact, offer proposals or advocate positions which might, if adopted, advance a Deep Ecology faith, if such a faith exists. The Forest Service may also occasionally reach or accept conclusions offered by the nonprofit defendants. For the nonce, the Court assumes both possibilities to be true. But these possibilities cannot, by themselves, support a conclusion of adoption, collusion, or co-option, and no facts were pled to support any such conclusion.

Finally, the Court finds that respondent's claim that the Court is constrained to assume his proposition that the nonprofit defendants are adherents of a Deep Ecology religion -- for pleading purposes -- unless or until a trial is held on the question, and that such an assumption would prevent dismissal of the case, is irrelevant and based on a profound misunderstanding of the question before the Court. It is, more significantly, unsupported in law.

Plaintiff's complaint asserted, among other things, that the defendants were Deep Ecologists. The defendants replied by bringing a Rule 12 motion asking the Court to determine whether, assuming the factual allegations to be true, the plaintiffs had stated a claim upon which relief could be granted. Respondent's reply to defendants' motion focused on his assertions that defendants were, in fact, Deep Ecologists. The position he took was disingenuous in the extreme, and was a travesty of Rule 12 jurisprudence.

In respondent's view, his allegation that the nonprofit defendants were members of a Deep Ecology religion, when the defendants denied it, defeated a Rule 12 motion. He took this position, claiming that the purported religion's existence and the defendants' membership were questions at issue. The Court considers this to be an untenable position. The religion's existence, and defendants' membership therein, were simply not the questions facing the Court.

Certainly, a complaint's well-stated factual allegations are assumed to be true. See, e.g., Haddle v. Garrison, 525 U.S. 121, 125 (1998). But the Court is under no duty to assume facts or conclusions which are without logical basis, or which, even if proven, cannot support a claim. See, e.g., Knapp v. Hanson, 183 F.3d 786, 788 (8th Cir. 1999) ("[T]he Court must construe the allegations in the complaint and reasonable inferences arising from the complaint favorably to the plaintiffs.") (emphasis added); Springdale Educ. Ass'n v. Springdale School Dist., 133 F.3d 649, 651 (8th Cir. 1998) ("[A] complaint must contain facts sufficient to state a claim as a matter of law and must not be merely conclusory in its allegations."). In short, assuming the facts in a complaint to be true does not compel the Court to accept the legal conclusions of those facts as presented by the complaint.

As the Court noted in its Order dismissing the matter, dismissal is appropriate "when a complaint, even taken as true, and considered in light of applicable law, shows an insuperable bar to relief." Associated Contract Loggers, 84 F. Supp. 2d at 1031. Respondent focused incessantly on being permitted to prove that defendants adhered to Deep Ecology. That is not now, and never was, the question. The Court's underlying Order dismissed plaintiff's case, even assuming away the logical and legal fallacies identified above.

With all of this made clear, the Court cannot find -- and respondent has still not offered -- any legal precedent to support the complaint's central proposition that a religiously motivated party who seeks a remedy from a federal defendant is foreclosed from suit if the proposed remedy is in accord with that party's religious beliefs. The Lyng plaintiffs' arguments were religious arguments, not secular arguments motivated by religious beliefs. Lyng does not bridge the gap.

In sum, respondent offered no legal support or justification for his claim. He has argued without a legal basis for a rule which would summarily bar any religious group which considered "Thou shalt not kill" to be a religious

mandate, from seeking to limit or modify laws concerning capital punishment. Certainly a group which felt that any limit to pregnancy violated a religious precept would be blocked. Similarly, people who favored -- or who even sought to bar -- religious displays or school prayer would be without a forum. Brown v. Board of Educaton might well have been barred as religiously motivated under plaintiffs' proposed remedy. And in each case, that bar would be imposed by an a priori judicial determination that the plaintiff's suits were based on their religious beliefs, and the relief sought would bend the government to their will. These positions are not simply wrongheaded; they are directly contrary to well-established constitutional law, and have no place in federal court.

IV. Sanctions

The Court finds respondent's advance of these propositions, absent any basis in law, directly violates Rule 11's mandate that counsel certify that submissions are "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law."

Lawsuits such as these, which are baseless logically and legally unsupported -- actions which do not at all advance or advocate for the extension of any recognized legal principle -- are precisely the claims which Rule 11 is designed to deter.

Respondent has chosen to reply to the Court's order to Show Cause by restating his belief that he should have been able to continue his claim, by suggesting that the Court neither knew nor considered the law, and by a polemic contending that the private defendants' views showed them to be members of an anti-western religion faith. He has not chosen to reply to the issues raised in the underlying order or the mandate of Rule 11.

Such behavior is subject to sanction, according to Rule 11's directive that submissions to the Court must not be "presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Respondent's replies to the Order to Show Cause simply confirm the Court's prior concern that the underlying lawsuit is, in fact, a "SLAPP" suit. See Associated Contract Loggers, 84 F. Supp. 2d at 1038 & n.9 (citing Greenwich Citizens Comm. v. Counties of Warren & Washington Industrial Development Agency, 77 F.3d 26, 29 (1996) (defining "SLAPP" suits as "Strategic Lawsuits Against Public Participation")).

The statements the Court set forth as "preliminary observations," Associated Contract Loggers, 84 F. Supp. 2d at 1038, have become its factual conclusions. While it is impossible to examine directly the motivations of a party or an attorney, the inference in this case is inescapable that this case is unsupportable in fact or law, and has been brought to harass and delay the defendants. It has not been presented in good faith. It is an utter waste of this Court's time. It falls far below the minimal standards which are expected of federal court practitioners, all of which invokes the Court's inherent power to protect the integrity of the judicial process, itself.

Accordingly, IT IS ORDERED that:

Stephen B. Young, the respondent herein, shall pay to each of the nonprofit defendants the sum of $2,500, for a total penal sum of $5,000, as a sanction imposed under Fed R. Civ. P. 11, and in accord with this Court's inherent powers, within ten (10) days of the date of this Order.

Dated: May 26th, 2000

/s/
JAMES M. ROSENBAUM
United States District Judge

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 00-2646

In re: Stephen B. Young,	*	Appeal from the United States
	*	District Court for the
Petitioner.	*	District of Minnesota
	*	[UNPUBLISHED]

Submitted: March 16, 2001

Filed: June 5, 2001

Before MURPHY, LAY, and BYE, Circuit Judges.

PER CURIAM.

Steven B. Young, on behalf of his clients Associated Contract Loggers, Inc., and Olson Logging, Inc., filed a lawsuit in United States District Court for the District of Minnesota against the United States Forest Service and two not-for-profit groups, Forest Guardians and Superior Wilderness Action Network. See Associated Contract Loggers.Inc., et al. v. United States Forest Service, et al., No 99-CV-1485. The suit alleged a violation of the Establishment Clause. After dismissing the suit pursuant to Fed. R. Civ. P. 12(b)(6), the district court[1] ordered Young to

[1] The Honorable James M. Rosenbaum, United States District Judge for the District of Minnesota.

show cause as to why sanctions should not be imposed against him for initiating a lawsuit without any reasonable basis in law. After considering Young's brief in response to the Show Cause order, the district court imposed sanctions of $5,000 pursuant to Fed. R. Civ. P. 11. Young appeals.

Finding that no error of law appears in the district court's opinion, and that further opinion would have no precedential value, we affirm without discussion. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.